

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Draft Minutes

Tuesday, February 9, 2016

10:00 a.m. to 12:00 p.m.

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Keith D. Barth, Judge Marianne T. Bayardi, Judge Carol Scott Berry, Carla F. Boatner, Deborah Fresquez, Gloria E. Full, Patricia George, Esq., Judge Statia D. Hendrix, Rosalie Hernandez (proxy for Dana Martinez), Patricia Madsen, Captain Jeffrey Newnum, Judge Wyatt J. Palmer, Deputy Chief Andrew R. Reinhardt, Shannon Rich, Mary Roberts (proxy for Assistant Chief Sandra Renteria), Amy Jo Robinson, Tracey J. Wilkinson

Telephonic: Ellen R. Brown, Diane L. Culin, Dolores Lawrie-Higgins, Sarah Jimenez-Valdez (proxy for Anna Harper-Guerrero), John R. Raeder III

Absent/Excused: Lynn Fazz, Dorothy Hastings, Rebecca Strickland, Judge Patricia A. Trebesch

Presenters/Guests: Judge Karen Adam (Ret.), Shelley Clemens (AUSA), Aleshia Fessel, Betty McEntire, Judge Ron Reinstein (Ret.), Sharon Sexton (AUSA), Jovana Uzarraga-Figueroa (U.S. Attorney's Office-District of Arizona); and Jennifer Albright, Theresa Barrett, Denise Lundin, Jennifer Mesquita, Kathy Sekardi (Administrative Office of the Courts)

AOC Staff: Kay Radwanski, Julie Graber

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 9, 2016, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:01 a.m. by Judge Wendy Million, Chair. Judge Million welcome members and introduced new members, Dolores Lawrie-Higgins, public member; John R. Raeder, III, Governor's Office for Children, Youth and Families; and Amy Jo Robinson, Maricopa Association of Governments.

B. Approval of Minutes

The draft minutes from the November 17, 2015, meeting of the CIDVC were presented for approval.

Motion: To approve the November 17, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Keith Barth, **Seconded by** Judge Carol Scott Berry. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Domestic Violence and the Federal System

Shelley Clemens and Sharon Sexton, Assistant United States Attorneys with the U.S. Attorney's Office-District of Arizona, reviewed federal domestic violence laws and

statutes that are available for prosecuting defendants in domestic violence cases and discussed the challenges and issues of domestic violence cases.

- 18 U.S.C. § 922(g) governs the unlawful possession of firearms or ammunition. Prosecution for unlawful possession is not limited to firearms and includes possession of ammunition.
 - § 922(g)(1) – Unlawful possession of a firearm or ammunition by a convicted felon is the most commonly charged and applies to a person convicted in federal and state jurisdictions with felony offenses punishable by imprisonment exceeding one year. In order to prosecute, official court documents of conviction are needed, but the suspect does not need to have served more than one year.
 - § 922(g)(3) – Unlawful possession by a drug user or addict is not commonly charged because it is difficult to prove.
 - § 922(g)(5) – Unlawful possession by an alien is used for a person unlawfully present in the United States whose alien status is confirmed through immigration records after deportation. The defendant's statements can be used.
 - § 922(g)(8) – Unlawful possession while under a restraining order requires a domestic violence relationship and specific language in the court order, including a finding that the defendant is a credible threat to the partner's safety or qualifying language that prohibits the use, attempted use, or threatened use of force against the partner. This language is not always met in standard restraining orders.
 - § 922(g)(9) – Unlawful possession of a firearm with a prior domestic violence conviction does not apply to all domestic violence convictions and requires an element of force.
- Prosecutors can accept a § 922(g) case only if they can establish that it impacts interstate or foreign commerce, also called the "nexus" element. The Bureau of Alcohol, Tobacco, and Firearms will most often establish and confirm the nexus by tracing the weapons in a case to firearms or ammunition manufactured outside of Arizona and provide the required nexus statement to prosecutors.

Ms. Clemens discussed issues in unlawful possession cases and with qualifying prior convictions in tribal courts, prior misdemeanor crime of violence, domestic violence relationship, and adjudicated as mentally defective.

- A common "defense" is that the defendant did not know it was unlawful to possess ammunition. The prosecutor does not need to prove that the defendant knew it was unlawful because strict liability applies and it is the defendant's responsibility to know what is prohibited. How does a prosecutor prove knowledge, exclusive use, or possession when a firearm is found in a vehicle or in a home with multiple occupants? The prosecutor can show knowledge, physical control, intention, and ability to control with other evidence, such as firearm accessories, receipts, and gun shop footage.
- There are issues with qualifying prior convictions in tribal courts because of inconsistency in the law. In *U.S. v. First*, misdemeanor convictions in tribal court qualified as prior offenses for misdemeanor firearms possession so long as they received all rights available under the Indian Civil Rights Act; however, *U.S. v.*

Bryant held that prior misdemeanor convictions in tribal court could not be used to support a felony charge of domestic assault if the defendant was not provided a 6th Amendment Right to Counsel.

- A prosecutor should narrow down the factual basis to reflect the intentional use of physical force, rather than recklessness, for a prior misdemeanor crime of violence.

The presenters described the writ process from tribal to federal custody. While some tribes have a formal process, others do not. Prosecutors are constantly working with the tribes individually if there is a federal issue.

- The presenters confirmed that the federal definition of co-habiting is more narrow than the state's and must include an intimate partner relationship.

Jovana Uzarraga-Figueroa, Victim Witness Specialist, U.S. Attorney's Office-District of Arizona, discussed issues with victim rights, how victims are helped through the federal justice system, and the resources available. She noted that there are 21 federally recognized tribes in Arizona. She identified challenges for tribal victims with limited resources, transportation, safety planning, extended law enforcement response time, communication, and cultural and language issues.

B. Accounting for Domestic Violence in Custody Decisions

Judge Karen Adam (Ret.) provided background information regarding the [National Child Custody Project](#), which was developed by The Battered Women's Justice Project, National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts. The project was designed as a set of guidelines and curriculum to assist family court practitioners gather, synthesize and analyze information about the context and implications of domestic violence and account for the impact of domestic violence in actions and decisions. The module on taking informed action by accounting for abuse provides direction for judges on the nature, context and implications of abuse; connects domestic violence with parenting skills and best interest factors; and addresses relationships, remediation plans and safety. The training can be done online or as part of a day-long session. Judge Adam is talking with the AOC's Education Services and Court Services Division about providing a training session at the family law bench conference.

C. Implementation of Amendment to ARS § 13-3967 Re: DV Risk and Lethality Assessments

Judge Ron Reinstein (Ret.), chair of the Commission on Victims in the Courts (COVIC), discussed risk and lethality assessments in domestic violence cases and raised concerns about the lack of uniformity and training for law enforcement and judicial officers in implementing amendments to ARS § 13-3967. Judge Reinstein suggested creating a joint workgroup consisting of COVIC and CIDVC members to address these implementation issues and promote training, uniformity, confidentiality and standardized lethality assessments. He invited members to attend the next COVIC meeting on February 26, 2016, at 10:00 a.m.

The committee consensus was to partner with COVIC in a joint COVIC/CIDVC workgroup to discuss risk and lethality assessments. Patricia George, Anna Harper-

Guerrero, Judge Wyatt Palmer, John Raeder, Deputy Chief Reinhardt, Shannon Rich, Amy Robinson, Judge Patricia Trebesch, and Tracey Wilkinson volunteered for the workgroup. Denise Lundin and Kay Radwanski will coordinate the workgroup.

D. Workgroup Report: Judicial Education Workgroup

Judge Marianne Bayardi reported that Dr. Neil Websdale, professor at Northern Arizona University, will be presenting two domestic violence topics at the Judicial Conference in June regarding lethality assessments in family law cases and the benefits and limitations of lethality assessments. Judge Million and Kay will be presenting on the revised ARPOP rules.

Judge Million reported that Bench Briefing 7—What’s New with ARPOP and Bench Briefing 8—Modifying and Dismissing Protective Orders have been revised to incorporate the new ARPOP rules.

E. ARPOP Rule Petitions (R-15-0035, R-16-0026)

Kay Radwanski reported on rule petitions that have been filed in the current rule cycle that affect the ARPOP rules. Members were asked to consider whether CIDVC should file formal comments to any of the petitions.

- R-15-0035 – The petitioner noted that the language clarifying that Orders of Protection must allege each specific act that will be relied on at the hearing was not included for Injunctions Against Harassment and Injunctions Against Workplace Harassment. Members agreed that the language should be consistent.

Motion: To file a comment to petition R-15-0035 stating that the language should be consistent. **Action:** Approve, **Moved by** Judge Bayardi, **Seconded by** Judge Palmer. CIDVC members also authorized Judge Million to file the comment to R-15-0035. Motion passed unanimously.

- R-16-0026 – The purpose of the rule petition is to expedite service of Orders of Protection by clarifying that courts are permitted to transmit orders electronically to cooperating law enforcement agencies. The benefits include saving time for plaintiffs and instant communication between courts and law enforcement. Ms. Radwanski explained why a commitment is needed from courts and law enforcement agencies (or private process servers). The deadline for comments is April 20, 2016.

Motion: To file a comment to petition R-16-0026 stating that CIDVC supports the proposed amendments. **Action:** Approve, **Moved by** Judge Palmer, **Seconded by** Deputy Chief Reinhardt. CIDVC members also authorized Judge Million to file the comment to R-16-0026. Motion passed unanimously.

- R-16-0008 – This petition, filed by the Committee on Time Periods for Electronic Display of Superior Court Case Records, would amend Rule 123, Rules of the Supreme Court, regarding access to court records by requiring courts to remove

records from public access websites in accordance with the applicable records retention schedule; and to publish a prominent disclaimer describing the limitations on the case information displayed for courts that maintain public access websites. In superior court, Orders of Protection are retained with the court for 50 years and destroyed after the retention period; they are available on court public access websites for 50 years. In limited jurisdiction courts, OP cases are retained for only three years. The deadline for initial comments is April 20, 2016. The plan is for the amended Rule 123 and the records retention schedule to take effect on January 1, 2017. The committee consensus was not to file a comment.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

Call to the Public: Morgan Cottrell requested information about domestic violence training for judges.

B. Next Committee Meeting Date

Tuesday, May 10, 2016

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 119

1501 W. Washington Street

Phoenix, AZ 85007

The meeting adjourned at 11:59 a.m.